

REMARKS

Claims 1 and 13 have been amendments. Claims 2 and 14 have been canceled. New independent claim 25 has been added. No new matter has been added by these amendments. Accordingly, claims 1, 3-13, 15-21, and 23-25 are pending in this application.

Claim Objections

The Office Action indicated that dependent claims 2, 9, 10, 14, and 21 would be allowable if rewritten in independent form.

Dependent claim 2 has been cancelled, and independent claim 1 has been amended to include the patentable subject matter described in dependent claim 2. As such, independent claim 1 and associated dependent claims 3-12 are in condition for allowance.

Dependent claim 14 has been cancelled, and independent claim 13 has been amended to include the patentable subject matter described in dependent claim 14. As such, independent claim 13 and associated dependent claims 15-21 and 23-24 are in condition for allowance.

In addition, new independent claim 25 includes the patentable subject matter described in dependent claim 10. Thus, new independent claim 25 is in condition for allowance.

Nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the claim amendments herein do not signify concession of unpatentability of claims 1 and 13 prior to the amendments herein.

Applicants hereby specifically reserve the right to prosecute the previously presented subject matter of claims 1 and 13 (prior to these amendments herein) in a continuation application. Also, Applicants hereby specifically reserve the right to prosecute claims of different or broader scope in a continuation application. The Examiner should infer no (i) adoption of a position with respect to patentability, (ii) change in the Applicant's position with respect to any claim or subject matter of the invention, or (iii) acquiescence in any way to any position taken by the Examiner, based on the amendments made herein.

Applicants Traverse The Instances of "Official Notice" In The Final Office Action

The Final Office Action indicated that the Examiner was taking "Official Notice" for the rejection of certain dependent claims. The attempt to take Official Notice in the Final Office

Action is improper in the context of the dependent claims at issue. “While ‘official notice’ may be relied on, these circumstances *should be rare* when an application is *under final rejection*.” MPEP §2144.03(A) (emphasis added). Here, Applicants traverse the two instances of Official Notice in the Final Office Action and request that the Examiner either withdraw such attempts to take Official Notice or provide “documentary evidence” in the next communication, as required by MPEP §2144.03(C).

First, Applicants specifically traverse the attempt to take “Official Notice” of “the equivalence of a belt drive system and a planetary gear drive system for their use as a drive system.” It appears that this contention is in essence an argument that one having ordinary skill in the art would find it obvious to substitute Corzine’s belt drive system with the claimed planetary gear system. However, the Office Action sets forth no motivation in the prior art to substitute the belt drive system of Corzine’s walk-behind turf aerator with a planetary gear system to drive aeration tines. Further, the Office Action fails to explain a reasonable expectation of success for such a proposed substitution, especially in light of the operation of the claimed weight transfer system. In short, one having ordinary skill in the art would have been motivated to construct the proposed combination only upon reference to the teaching of Applicants’ specification, which is improper in an obviousness analysis under 35 U.S.C. § 103 and improper in the context of taking “Official Notice.”

Second, Applicants specifically traverse the attempt to take Official Notice “for wheeled implements to include suspension systems.” Not all aerators include suspension systems. A number of factors may affect whether an aerator includes a suspension system, such as the travel speed of the aerator, the weight and construction of the aerator, and the like. Again, it appears that this contention is in essence an argument that one having ordinary skill in the art would find it obvious to add the claimed suspension system to Corzine’s walk-behind turf aerator. However, the Office Action fails to sets forth a motivation in the prior art for the proposed modification and fails to explain a reasonable expectation of success for the proposed modification, especially in light of the operation of the claimed weight transfer system.

Simply put, the Final Office Action failed to set forth “some form of evidence in the record to support an assertion of common knowledge.” MPEP § 2144.03(B); *see also In re Lee*, 277 F.3d 1338, 1344-45 (Fed. Cir. 2002). Applicants respectfully request that the Examiner

Applicant : David R. Maas et al.
Serial No. : 10/776,007
Filed : February 10, 2004
Page : 8 of 8

Attorney's Docket No.: 13506-016001

either withdraw such attempts to take Official Notice or provide "documentary evidence" in the next communication, as required by MPEP § 2144.03(C).

No fee is believed due in connection with this submission. Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: February 27, 2006



Michael T. Hawkins
Reg. No. 57,867

Fish & Richardson P.C., P.A.
60 South Sixth Street
Suite 3300
Minneapolis, MN 55402
Telephone: (612) 335-5070
Facsimile: (612) 288-9696